**COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING**

**{Chapter VIII, Rule 32(2)(b)}**

Description of the Case.

CRIMINAL APPEAL No.311 of 2001
(Old No. 1968 of 1985)

1. Naresh Kumar alias Munna alias Jippi S/o Piray Lal R/o 76, Arhat Bazar, P.S. Kotwali, Dehradun
2. Sudesh Kumar S/o Ram Kishan Das alias Ram Kishan R/o 31 Sayeed Mohalla, Dehradun

**.....Appellants**

Versus

The State

**..... Respondent**

Sri S.K. Agarwal Sr. Advocate, assisted by Sri Lokendra Dobhal, learned counsel for the appellants
Sri Amit Bhatt, learned Addl. G.A. and Sri M.A. Khan, learned brief holder for the State / Respondent

Approved for reporting.
~~Not approved for reporting.~~

Date: July 9, 2007

**(Dharam Veer, J.)**

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**

**CRIMINAL APPEAL No.311 of 2001**
**(Old No. 1968 of 1985)**

1. Naresh Kumar alias Munna alias Jippi S/o Piray Lal R/o 76, Arhat Bazar, P.S. Kotwali, Dehradun
2. Sudesh Kumar S/o Ram Kishan Das alias Ram Kishan R/o 31 Sayeed Mohalla, Dehradun

.....Appellants

**Versus**

The State ..... Respondent

**Dated: July 9, 2007**

**Sri S.K. Agarwal, Sr. Advocate, assisted by Sri Lokendra Dobhal, learned counsel for the appellants**
**Sri Amit Bhatt, learned Addl. G.A. and Sri M.A. Khan, learned brief holder for the State/Respondent**

**HON. DHARAM VEER, J.**

This appeal, preferred under Section 374(2) of Code of Criminal Procedure 1973 (*hereinafter to be referred as Cr.P.C.*), is directed against the judgment and order dated 26.07.1985 passed by Additional Sessions Judge, Dehradun, in Sessions Trial No.55 of 81, Session Trial No. 56 of 81 and Session Trial No. 57 of 1981, whereby the learned Additional Sessions Judge has convicted the appellants u/s 392 r/w 34 of Indian Penal Code, 1860 (*hereinafter to be referred as I.P.C.*) and sentenced to undergo five years R.I. and further to pay a fine of Rs.5,000/- each. In default of fine, it was directed that the appellants shall undergo further R.I. for six months each. Appellant Naresh was also convicted u/s 307 IPC and sentenced to undergo R.I. for three years. Appellants Naresh and Sudesh were further convicted u/s 25 of Arms Act and each of them was sentenced to undergo R.I. for one year. All the sentences except that of default in payment of fine were directed to run concurrently.

2. During the trial, the accused Sansar absconded and could not be traced out hence, his file was separated and the trial proceeded against the rest of the accused. When the trial of the three accused concluded, one of the accused, namely, Pawan was killed, as a consequence of which the proceedings against him were also abated.

3. Appellant Naresh Kumar alias Munna has been reported to be died. C.J.M., Dehradun by his report dated

22.1.2004 has informed that the appellant Naresh Kumar alias Munna alias Jippi has died on 25.5.2003 in a police encounter. Hence, the appeal against the appellant Naresh Kumar stands abated. Now, the appeal only survives against the appellant Sudesh Kumar.

4. The prosecution story, in brief, is that Jagdish Prasad P.W.2 resident of Vikasnagar, District Dehradun is a wholesale Beedi Merchant and he carries on his business in the name and style of M/s Madrasee Basant Beedi. His firm supply beedis to the retail shopkeepers of small town namely Purola, Badkot, Damra, Naugaon etc. Sri Jagdish Prasad goes to collect his dues from the retailers on every 15th day. On 7.3.1981 also he went to Purola, Badkot for realization of his dues and Shri Harish Chand Bhandari and Dharmanand Tewari were all traveling in Car No.DHB 6198 (subsequently changed to URM 1692) which was being driven by the driver Gyanendra Singh. While coming to Vikasnagar from Purola, Sri Jagdish Prasad and his companions had a halt at the curve of Katta Pathhar and when he alighted from the car with a view to ease himself, four miscreants came on one scooter No.UTL 8354 (Ex.1) and parked the said scooter in front of the motor car. Two of the miscreants were armed with revolvers and the remaining to had khukhries with them. All of them surrounded Jagsidh Prasad and directed him to handover the moneybag to them and they also threatened him to shoot dead if he would make any protest. Sri Jagdish Prasad being frightened of the miscreants quietly handed over the money bag containing about Rs.25,000/- to the miscreants. He had also given his wristwatch and a golden wring and Dharmanand Tewari was constrained to give case of Rs.230/- and the driver Sri Gyanendra Singh was compelled to give case of Rs.600/- to them. The fourth person sitting in the car namely Sri Harish Chand was forced to give his three wrist watches. The miscreants snatched away the keys of the car from its driver Gyanendra Singh and one of the miscreants ran away on the scooter along with the money

bag while the remaining three boarded the car and fled away. Sri Jagdish Prasad identified Sri Pawan alias Pannu who drove away the car. Thereafter, a Truck No.UTL 6467 came at the site of the occurrence and Sri Jagdish and his other companions narrated the story to the driver and requested him to give them lift. On being permitted by the driver, the boarded the truck and after travelling for some distance, they saw that scooter was tow-chained with the car. Then they reached village Badowala where Shivratri fair was being celebrated. There they met Sri N.K. Tyagi, Station Officer of P.S. Vikasnagar, to whom the entire story of robbery was disclosed by them. In the meantime, a person came running and informed the Station Officer that a car had caused an accident and the driver ran away. The Station Officer along with S.I. Jeet Singh, Jagdish Prasad and Dharmanand Tiwari boarded on a bus No.USK 9260 and chased the car. They saw the car going towards Dakpathhar and the miscreant driving the scooter also entered the car and the scooter was seen being dragged. In a shortwhile, the bus came closer to the car and the Station Officer shouted at the miscreants and asked them to stop the car. The miscreants started firing from inside the moving car and the police also exchanged fire. S.I. N.K. Tyagi fired a shot which struck at the rear wheel of the car causing puncture therein and in consequence whereof, the miscreants had to stop the car. The two police officers when proceeded towards the car, the miscreants took to their heels and one of them fired at Station Officer N.K. Tyagi but he luckily escaped. This occurrence had taken place in Tons Colony, Dakpathhar. The Station Officer N.K. Tyagi chased the miscreants and succeeded in securing Naresh who had before his arrest fired at him. The other S.I. Jeet Singh had arrested the appellant Sudesh (who is the present alive appellant). After their arrest, the appellants were made Baparda by their woolen garments. Both the appellants were arrested at different places. Appellant Sudesh was arrested in front of Quarter No.25A and 27A of Tons Colony and other appellant Naresh was arrested in the other lane of the colony. Appellant

Naresh resisted his arrest by striking at the Station Officer N.K. Tyagi by his country made pistol as a result of which Sri N.K. Tyagi sustained injuries. On the search of appellant Naresh, a country made pistol Ex.8, two cartridges Exs.9 and 10, case of Rs.415/- Ex.11 and two watches Exs.12 and 13 were recovered. The recovered articles were packed and sealed in two separate bundles Exs.14 and 15 and recovery memo Ex.Ka-8 was prepared at the site of the arrest. This recovery and witnessed by Sri Rajesh Kumar and Sri Shankar Singh who were the witnesses of locality. When Sri N.K. Tyagi came at the place of the car where S.I. Jeet Singh was standing there, informed him that he had succeeded in capturing one another miscreant Sudesh Kumar. After the arrest of Sudesh Kumar, S.I. Jeet Singh had taken his personal search and one Khukhari Ex.20, two cartridges Ex.21 and Ex.22, Rs.220/- in case Ex.23 and a watch Ex.24 were recovered from him. All these articles were packed and sealed in a bundle Ex.25 and a recovery memo Ex.Ka-16 was prepared by S.I. Jeet Singh. After the arrest of the appellant Sudesh, two inspectors took search of the car. A bag Ex.2 was recovered from the paddles of foot brakes and clutches etc. and when it was opened a sum of Rs.13,107/- with bills Exs.5, 6 and 7 was found therein. On the rear seat of the car, a 12 bore empty cartridge was lying. In the dicky of the car, beedi packets Ex.3 and Ex.4 were found. The scooter Ex.1 was lying behind the car and it was tied with the rear side of the car with a nylon string Ex.16 and a recovery memo Ex.Ka-9 was prepared. With regard to the empty cartridges recovered from near the place of car being parked, a recovery memo Ex.Ka-10 was prepared. The two police inspectors also fired 10 rounds out of which six by N.K. Tyagi and four by Sri Jeet Singh. All the empty ten cartridges were also taken into custody and recovery memo Ex.Ka-11 was prepared in respect thereof and they were packed and sealed in two separate bundles Ex.17 and Ex.18. The tyre, which got punctured, was marked as Ex.19. In the meantime, S.I. Ramesh Chand and S.I. Kishan Singh along with other police force also arrived there. The

appellants along with recovered articles in sealed bundles were taken to Dakpatthar out post where FIR was lodged and Chik FIR Ex.Ka-14 was prepared and the entry was made in the G.D. at Report No. 15, copy of G.D. is Ex.Ka-15.

5. Thereafter, S.I. Jit Singh was medically examined on 7.3.1981 at 10:00 P.M. in Y.P. Hospital, Dakpatthar by Dr. G.C. Nautiyal. He has found the following injuries on his body:-

1. *Abrasions on dorsum of the left index finger size 2 cm x 1 cm. Covered with fresh blood clot.*
2. *Abrasions on the dorsum of the left hand at the base of mid & ring finger. Covered fresh blood clot.*
3. *Contusion 6 cm x 2 cm on the left arm as lateral side below the shoulder joint, colour red.*
4. *Abrasion on the base of the left thumb on dorsal surface 1.5 cm x 1 cm.*

The doctor has stated that all the injuries were simple in nature. Injuries No.1, 2 and 4 were caused by friction against rough object while injury No.3 was caused by blunt object. Duration of the injuries was fresh. He has proved the medical report Ex.Ka-3.

6. S.O. N.K. Tyagi P.W.4 was also examined on 7.3.1981 at 10:15 P.M. in Y.P. Hospital, Dakpatthar by doctor G.C. Nautiyal. He has found the following injuries on his body:-

1. *Abrasion on the right index finger 2 cm x 1 cm. Covered with fresh blood clot*
2. *Abrasion on the Dorsum of mid finger near the nail bed. 1 cm x 1 cm in size*
3. *Scratch on the left little finger on the medial extended up to the bone of the top.*
4. *Contusion 4 cm x 3 cm on the right gluleal region, colour red.*
5. *Contusion with swelling on the left knee joint, 3 cm x 2 cm, colour red.*

The doctor has stated that all the injuries were simple in nature. Injuries No. 1 and 2 were caused by friction against rough object and injury No.3 was caused by a pointed object while injury No.4 and 5 were caused by sharp object. Duration of the injuries were fresh. He has proved the injury Report Ex.Ka-4.

7. Appellant Naresh Kumar was examined on 7.3.1981 at 9:10 P.M. by Dr. G.C. Nautiyal. He has found following injuries on his person:-

1. *Lacerated wound on head (2.5 x .5 cm) on the fractal region; blood oozing out.*
2. *Lacerated wound 1.5 x .5 cm in occipital region; blood oozing out.*
3. *Abrasion 1 cm away from the above injury size 1x.5cm*
4. *Lacerated wound on the left paved region of the head 3 cm x 1 cm.*
5. *Lacerated wound 2.5 x 3 c on the head on fractal region7 cm far away from Injury No.1*

6. *Contusion on the right arm above the elbow, 8 cm x 3 cm on lateral side. Colour red*
7. *Contusion on the right forearm below the elbow 8 cm x 2 cm in size, colour red*
8. *Swelling on the wrist and right hand extending from the mid of the forearm.*
9. *Contusion on the left arm 8x2 cm just below the elbow joint on vertical surface*
10. *Swelling on the left arm and wrist joint and whole of the dorsum of the hand.*
11. *Contusion with swelling on the right knee just 3.5 x 3 cm, colour red*
12. *Contusion with swelling on the left knee joint just 3.5 x 2 cm, colour red.*

The doctor had advised X-ray for P.A. & lateral view of both the arms and wrist joint and palm. The doctor has opined that all the injuries except Injuries No.8 and 10 were simple in nature and were kept under observation. All the injuries were caused by blunt object. He has proved the injury Report Ex.Ka-5.

8. Thereafter, appellant Sudesh Kumar was examined on 7.3.1981 at 9:35 P.M. by Dr.G.C. Nautiyal. He has found following injuries on his person:-

1. *Lacerated wound with swelling over the dorsum of left hand. Size of the wound 2 x 1 cm.*
2. *Abrasion on the right palm at base of ring finger. Size 1.5 x 1 cm.*
3. *Abrasion & contusion 2x.5 cm on the joint left thigh at mid point.*
4. *Contusion on the right lower thigh on lateral side remaining parallel to each side 7x1.5 cm. Red colour*
5. *C/o Pai on the back of the chest*
6. *C/o Pai on the both hand and*
7. *C/o Pai on the head*

The doctor has advised X-ray of the left forearm with wrist joint and whole of the palm. The doctor has opined that injury no.1 seems to be fracture and the opinion will be given after X-ray. All the injuries were simple in nature. Injuries No.1, 3 and 4 were caused by blunt object which injury No.2 is caused by friction against rough object. No opinion for injuries No.5 and 6 can be given. Duration of injuries were fresh about 2-3 hours. He has proved injury report, i.e. Ex.Ka-6.

9. The investigation of the case was entrusted to Sri R.C. Yadav, S.I. After the investigation of the case, the charge sheets Exs.Ka-31 to Ka-34 were submitted by him against the appellants and other two persons namely Pawan and Sansar. During the investigation, he has recorded the statements of the witnesses and prepared the site plans i.e. Ex.Ka-23, Ka-24 and Ka-25 and after completing the investigation, he has submitted the charge sheets Ex.Ka-31 and Ex.Ka-32 u/s 25 of Arms Act against the appellants Naresh Kumar and Sudesh Kumar; under Sections

392/279/338/307/412 IPC i.e. Ex.Ka-33 against accused Pawan & Sansar and under Sections 392/307/412 IPC i.e Ex.Ka-34 against the appellants Naresh Kumar and Sudesh Kumar.

10. After filing of the charge sheets, the case was committed to the court of Sessions by the order of Judicial Magistrate-I, Dehradun on 30.05.1981.

11. On 19.08.1981, the learned Additional Sessions Judge, Dehradun has framed the charge against the appellants u/s 392 r/w 34 IPC and also Section 25 of Arms Act. The charge was explained to them who pleaded not guilty and claimed to be tried. Appellant Naresh Kumar was further charges u/s 307 IPC. Accused Pawan & Sansar were charged u/s 392 r/w 34 IPC, 279 IPC and 338 IPC. The charge was also explained to them who also pleaded not guilty and claimed to be tried.

12. In support of its case, the prosecution examined P.W.1 Dharmanand Tewari, P.W.2 Jagdish Prasad, P.W.3 Dr. G.C. Nautiyal, P.W.4 N.K. Tyagi, P.W.5 Sri Balwant, P.W.6 Rajesh Kumar, P.W.7 Brijendra Kumar Aggarwal, P.W.8 S.I. Sahdev Singh, P.W.9 S.I. Ghasita Singh, P.W.10 Constable Roop Chand and P.W.11 R.C. Yadav, I.O. of the case. Thereafter, statements of the appellants were recorded u/s 313 Cr.P.C. who have denied the allegations made against them and in support of their case, they had examined D.W.1 Sri S.Dhawan, Deputy Jailor Dehradun.

13. After appreciating the evidence on record, the learned Additional Sessions Judge, Dehradun by his judgment and order dated 26.7.1985 convicted the appellant u/s 392 r/w 34 IPC and sentenced to undergo five years R.I. and further to pay a fine of Rs.5,000/- each. In default of fine, it was directed that the appellants shall undergo further R.I. for six months each. Appellant Naresh was also convicted u/s 307 IPC and sentenced to undergo R.I. for three years. Appellants Naresh and Sudesh were further convicted u/s 25 of Arms Act and each of them was

sentenced to undergo R.I. for one year. All the sentences except that of default in payment of fine were directed to run concurrently. Feeling aggrieved by the said judgment and order dated 26.7.1985, the appellants have come up in appeal before this Court.

14. I have heard Sri S.K. Aggarwal, Sr. Advocate assisted by Sri Lokendra Dobhal, learned counsel for the appellants and Sri Amit Bhatt, Additional G.A. and Sri M.A. Khan, learned brief holder for the State/respondent.

15. In support of its case, the prosecution examined P.W.1 Dharmanand Tewari who has stated that he is a salesman and is in the employment of Jagdish Prasad who is a wholesale agent of Beedi. The supply of Beedi is in Vikasnagar, Barkot, Purola and he is the businessman of Madrasi Basant Beedi. Once in 15 days, they used to go to collect the price of Beedi. On 7.3.1981 at 5:00 A.M. in the morning, he had gone to recover the price of Beedi at Vikasnagar, Barkot, Purola etc. and he has gone from Car N.DHB 6198. Gyanendra Singh was driving the car and they started from Nogaon at about 1:00-1:30 P.M. On the way, they have also taken Harish Bhandari along with them and they have reached to Katta Pathhar at 4:30 P.M. in the evening. There were 2-3 bends in the road and in the last bend, he and Jagdish Prasad came out for easing out. Then four miscreants had reached there on a scooter Ex.1. They have stopped the scooter in front of the car and out of them, two had revolvers in their hands and two had Khukhris. They had abused them and told to give them whatever they have and then they have snatched the bag from the Jagdish Prasad and in that bag Rs.24,000-25,000/- were there. A ring and watch was also taken by the miscreants and from him Rs.20/- was taken. Rs.600/- was taken from the Gyanendra, three wristwatches of Harish Kumar were also taken and some money was also taken by them. They have taken key of the car from the driver and the driver was thrown out from the car. Three miscreants sat on the car and one

miscreant had taken the scooter and bag was with the person who had the scooter. Jagdish Prasad, Gyanendra had identified one of the miscreants namely Pawan. After ten minutes, a Truck had come towards Purolla. They have asked for lift and they had narrated the incident to the truck driver and then the truck driver had given the lift to them. While coming from Kata Pathhar to Vikasnagar, there is a turn of about 2 Kms. and from one hill, another hill can be seen. Then he saw that the scooter was tow-chained and while chasing they reached Badwala Tiraha where the Shivratri fair was going on. There he met with S.O. N.K. Tyagi and S.I. Jeet Singh. Then the Jagdish Prasad narrated the incident to S.O. Then S.O. N.K. Tyagi & S.I. Jeet Singh along with Gyanendra and Jagdish Prasad have followed the car by bus. Then he came to know that from the car, miscreants had caused an accident with somebody. This witness was cross-examined at length but noting has come out which may create any doubt in his statement. The statement of this witness is trustworthy, reliable, and believable.

16. P.W.2 is Jagdish Prasad who is the victim. He has stated in his statement that he is a wholesale businessman of Madrasi Basant Beedi and he used to supply the Beedi in Purola-Barkot-Damta-Naugaon etc. He goes to collect the money after every 15 days. He has identified the accused Pannu in the court. He was working as a driver with Sardar Jogendra Singh. He has also stated the Punnu Knew that he used to collect the money after every 15 days. On 7.3.1981, he went to Purola-Barkot along with Gyanendra Singh and Dharmanand Tewari to recover the money and about 25,000/- rupees were recovered. They went by car and he was the owner of the car. He brought that car in the court and the new number of the Car is URM 1692. He had also got the copy of the registration certificate in the court i.e. Ex.Ka-1. While coming from Damra, Harish Chand Bhandari came with them and at about 4:30 P.M., when they reached at Katapathhar bend, he alighted from the car for easing out. Then four persons came towards Badwala on a scooter, that scooter is Ex.1 and

number is UTL 8354. They parked the scooter in front of the car. He was having a bag in his hand in which money was there. Then the miscreants had asked him to give whatever he was having otherwise he was threatened to life. Two persons were having revolvers and two were having Khukhris. He had handed over the bag to them due to their terror and he also did not oppose. They have also snatched one wrist watch of Rs.300/-, one golden wring of Rs.700/- and a bag in which Rs.24,000-25,000/- were there. They have also snatched Rs.230/- from the Dharmanand Tewari, Rs.600/- from the Gyanendra and three wristwatches from Harish Chand and they have also taken the keys of the car from Gyanendra Singh. One miscreant had run after taking the bag in the scooter and the rest of the three persons sat in the car. Pannu took away the car by driving and he knew him before the incident. The bag which was snatched by him was before him in the court i.e Ex.2. In the Dikki of the car, there were bundles of beedis and empty bags. The bundles of Beeris were marked as Ex.3 and empty bags were marked as Ex.4. There was one stepney also in the car. After 7-10 minutes, a Truck had come towards Barkot No.UTL 6467. Then they boarded on the truck and he has narrated the entire story to the truck driver and asked him to go fast. After going 2 Kms., he had seen that the scooter was toe-chained behind the car. Then they have reached to Badwala where Shivratri fair was being celebrated. N.K. Tyagi and Jeet Singh, S.I. were also there and he narrated the entire incident to them. Then one person came and stated that one vehicle had caused injuries to some person. After that he along with S.O., Jeet Singh and Gyanendra started to chase by a Bus No.USK 9260. Then he had seen that the car was going towards Dakpatthar and the man who was on the scooter, sat in the car and the scooter was dragged behind the car. When the bus reached behind the car, then they asked to stop the car and then the miscreants had fired and the S.O. and Jeet Singh also fired on them. Due to the fire, the back wheel of the car was punctured and car got stopped. Then the appellants started running and

also made a fire and the fire was made towards the S.O. From the one side, S.O. N.K. Tyagi had chased the miscreants and on the other side, S.I. Jeet Singh had chased them. Then Jeet Singh had caught one of the miscreants Sudesh in the stairs of Qtr. No.25-A and 27-A. From the possession of Sudesh Singh, one Khukhri, Rs.220/-, one watch and cartridges were also recovered. S.O. N.K. Tyagi had arrested another appellant namely Naresh Kumar (now died). After the arrest, he identified the appellants and stated that these bundles of beedis belonged to him. After the fire, 5-7 other persons reached there and in his bag, some papers were also there along with the money; Ex.5, Ex.6 and Ex.7 are the same papers which were in the bag. This witness was cross-examined at length but nothing has come out which may create any doubt in his statement. The statement of this witness is trustworthy, reliable and believable.

17. P.W.3 is Dr.G.C. Nautiyal who has stated that on 7.3.1981, he was posted as Medical Officer in Yamuna Project Hospital. On that day, he had medically examined Balwant Singh and prepared the medical report at 5:30 P.M. on 7.3.1981. Balwant Singh was brought to him by Constable Suresh Chand and Kamal Chand. He found the following injuries on his body: -

1. *Lacerated wound 7.5 cm x 2 cm on the left lower limb 12 cms below the knee. Blood oozing out.*
2. *Abrasion size 3 x 3 cm on the left knee joint on medial side.*
3. *Abrasions on the right shoulder joint 6 x 5 cm.*
4. *Abrasion on the right elbow joint on the backside size 4 x 3 cm.*
5. *Abrasion on the head on right parietal region 5 cm x 4 cm.*
6. *Abrasion on the left cheek below the left eye 4 cm x 4 cm. Blood oozing out.*
7. *Abrasion on the left cheek 5 x 2 cm*
8. *Lacerated wound on right upper limb 3 x 2 cm. Blood oozing out.*
9. *Abrasions with swelling 5x4 cm on the chin below the lower lip.*

18. He has further stated that the Injuries No.2 to 7 could be caused by friction and Injuries No.1 and 8 could be caused by some blunt object (Kandala). As per his statement, these injuries were fresh at the time of medical examination and can be caused between 4-5 P.M. on the same day. The injuries could be caused

by the accident of car and the scooter. He had prepared the injury report at the time of medical examination i.e. Ex.Ka-2.

19. On the same day on 7.3.1981, he has examined S.I. Jeet Singh, S.I. Nand Kishore Tyagi and the appellants Naresh Kumar and Sudesh Kumar. The injury reports is Ex.Ka3 to Ex.Ka-6 and these injury reports were prepared by him. He has further stated that the injuries of the S.I. Jeet Singh and injuries No.4 and 5 of the S.I. Nand Kishore Tyagi could come by the butt of the pistol and the injury No.3 of the Jeet Singh can be caused by the back part of the Khukhri and these injuries could be possible between 5-6 P.M.

20. P.W.4 is N.K. Tyagi who has stated in his statement that on 7.3.1981, he has posted as S.O. in the P.S. Vikasnagar. He was on duty on that day along with other police personnel in the Badowala Shivratri fair. He had gone from the police station to the fair at 1:50 P.M. in the day. The entry was made in the G.D. No.16, the copy of the G.D. is Ex.Ka-7. He was in the fair along with S.I. Jeet Singh. He had come to a Tiraha, one way comes from Kalsi, another in from Vikasnagar and third way comes from Kattapatthar. At 5:00 P.M. in the evening from the side of the Kattapatthar, a truck had come and then Jagdish Prasad along with his companions had come to him and told him that he was coming from Purola by car after recovering the amount and near Katapatthar they come out for easing out. From Purola, Dharmanand Tewari and Gyanendra Singh and Harish Kumar were also coming with him. Jagdish Prasad informed him that he was coming by his Car No.DHB 6198. At about 4:30 p.m., four miscreants came and parked their scooter in front of the car and looted the bag containing cash of Rs.25,000/-, watch, wring, some case from Gyanendra Kumar and Dharmanand Tiwari and three watches from Harish Kumar by showing revolver and khukhri. After taking the keys from the Gyanendra Kumar, three miscreants along with Pannu who drove the car took with them and one miscreant came on scooter towards Vikasnagar. After

sometime, a truck came and they came after sitting in that and in the way they saw that the scooter was toe-chained behind the car. On this information, he along with S.I. Jeet Singh, Jagdish Prasad and Gyanendra Kumar had taken the bus No.USK 9260 whose driver was Mehendi Hasan and started to chase them. While starting from there, they came to know that one person had got the injuries with an accident in the car behind which the scooter was toe-chained and when they reached near about the Dakpathhar Chauraha, then they saw the car behind which the scooter was toe-chained. When they reached near the car, then they asked the miscreants to stop the car. In the meanwhile, the person who was sitting in the scooter also shifted in the car and the scooter was dragging behind the car and the person who was in the scooter was shifted in between Dakpatthar and Tiraha in the car. When he cried, then the miscreants sitting inside the car fired on him and then he had full confidence that those were the same miscreants who had looted the car and cash. The number of that car was DHB 6198 and for puncturing the car, he and Jeet Singh made a fire due to which the back wheel of the car got punctured. Then the miscreants come out of the car and then he along with Jeet Singh also started to catch the miscreants. The miscreants also made fire to kill him and they ran towards west. Two miscreants were having revolvers and one was having Khukhri and one miscreant who was having the Khukhri ran towards double storey of Qtr. No.25-A, 27-A. S.I. Jeet Singh had caught him. He had also chased the three miscreants and one miscreant ran away throwing the bundle of notes. Near the St. Mary's school Tiraha, one miscreant made a fire on him. One miscreant who was having Khukhri ran towards west. Two miscreants who were having revolvers ran towards South. Out of them Naresh Kumar was caught by him at about 5:30 P.M. in the evening. Accused Pawan Kumar alias Punnu ran away towards South. Appellant Naresh Kumar was caught thereafter. Naresh Kumar also hit him by revolver due to which he received injuries. Accused Naresh Kumar also received injuries. At that time,

Rajesh Kumar, V.K. Aggarwal and Shekhar Singh reached there and they had seen the incident. From the search of the Naresh Kumar, one country made pistol was recovered i.e. Ex.8. Two cartridges were also recovered from his possession i.e. Ex.9 and Ex.10 and Rs.415/- in cash and watch was also recovered from his possession, the amount of Rs.415/- was marked as Ex.11. One watch was recovered from his pocket and one was recovered from his hand, that are Ex. 12 and Ex.13 Pistol and cartridge were sealed in cloth and marked as Ex.14 and the money and watch was sealed in the cloth and marked as Ex.15. The fard was prepared on the spot and was witnessed by Rajesh Kumar and Shankar Singh, that Fard is Ex.Ka-8. Then he come near the car where the appellant Sudesh Singh was present being caught by S.I. Jeet Singh. Then he recovered a bag Ex.2 from the place near foot brakes from which Rs.13,107/- and some papers Exs.5, 6 and 7 were found. In the back seat, one empty Khokha of 12 Bore was recovered. In the Dikki of the car, bags of Beedis Exs.3 and 4 were recovered. In the back of the car, a scooter Ex.1 being toe-chained by the nylon string Ex.16 was recovered. In the west side of the car, two used cartridges and one Khoka was also recovered near the Tiraha. The recovery memo for recovery of Car No.DHB-6198, Scooter No.UTL 8354, the cash and rope was prepared, that memo is Ex.Ka-9. After taking the Khokas in the possession, the Fard was written by Jeet Singh. He has also signed on the Fard Ex.Ka-10. Ten khokas were also recovered on the spot. Out of this, six khokas were recovered which were fired by him and the four khokas which were fired by S.I. Jeet Singh, were recovered and that were sealed on the spot and sealed in a cloth, i.e. Ex.18 and a Fard was prepared on the spot i.e. Ex.Ka-11. The wheel, which was punctured by the fire, is Ex. 19 and the specimen of seal Ex.Ka-12 and Ka-13 were prepared. In the meanwhile, S.I. Ramesh Chandra and S.I. Kishan Singh along with other employees came on the spot. Then Dharmanand Tewari and Harish Kumar also reached on the

spot. Then the appellants were kept Baparda. Then the FIR was lodged on dictation of Head Constable Vijay Kumar i.e. Ex.Ka-14. The entry was made in the G.D. No.15, the copy of G.D. is Ex.Ka-15. Then the appellants were medically examined by the doctor in the Dakpatthar and after that he and S.I. Jeet Singh was also medically examined by the doctor. This witness was cross-examined at length but nothing has come out which may create any doubt in his statement.

21. P.W.5 is Balwant Singh who got the injuries on the accident by the car in question. This witness was declared hostile.

22. P.W.6 is the Rajesh Kumar who had stated that he has a shop in Dakpatthar. On 7.3.1981 at about 5:30 P.M., he was coming back to his shop after visiting the fair in Badwala Temple. When he was passing through the Tons Colony, then he heard the noise of the fire. When he reached near the Tiraha of St. Mary's School, then he saw that Sri Tyagi, S.O. Vikasnagar was chasing the accused persons and then he caught one accused and that person also fired at N.K. Tyagi, before his arrest. The accused who was caught by him, his name was Naresh. He identified the Naresh appellant (who is now died) in the court. The appellant Naresh was kept Baparda on the spot. From the possession of the Naresh, one revolver and three cartridges were recovered. One cartridge was the used cartridge and two other cartridges were the live cartridges and Rs.415/- and two watches were also recovered. He has further stated that when he reached near the Qtrs. No.25-A and 27-A and then he saw that the Jeet Singh had caught one person namely Sudesh Kumar and Brijendra Agarwal was also present there and the Car No.DHB 6198 was also there. From the car, a bag was recovered and in the bag Rs.13,107/- were there and one letter was also there in which the 7th date was mentioned. Except this, two other papers were there and these letters and Parchas are Exs. 5 to 7 and in the back seat of the car, one Khoka was there and in the Dikki of the car, bundles of beedis were recovered Ex.3 and Ex.4 and one

stepney in the car was also there. From the car, a scooter No.UTL 8354 was toe-chained with yellow string i.e. Ex.16, The fard was prepared on the spot of the car and scooter i.e Ex.Ka-9. One Khoka was recovered at some distance from the car and two Khokas were recovered on the Tiraha and one Khoka was found in the back seat of the car, in total 4 Khokas were recovered and a Fard was prepared i.e. Ex.Ka-10. The cartridges fired by the two police inspectors were 10 in number out of which six were fired by N.K. Tyagi and four were fired by S.I. Jeet Singh i.e. Ex.17. The Fard of this recovery was prepared i.e. Ex.Ka-11. He has further stated that in the Jail, two persons were identified by him and one was present in the court i.e Pawan Kumar. He saw those persons on the date of the occurrence and second time in the jail. He has further stated that the persons who were arrested on the spot were kept Baparda on the spot. This witness was cross examined at length but nothing has come out which may create any doubt in his statement. The statement of this witness is trustworthy, reliable and believable.

23. P.W.7 is the Brijendra Kumar Aggarwal who was the Junior Engineer, Electricity Department, Dakpatthar, Dehradun. He has stated that on 7.3.1981 at about 5:30 P.M. in the evening, he was present in front of Tons Colony, Dakpatthar and he was going to S.D.O. He had seen that one car was coming and in back of the car, one scooter was being dragged and behind it, a bus was coming. Then he heard the sound of fire and by the fire, the back wheel of the car got punctured and the car was stopped. Then, four miscreants had come down from the car and the three miscreants had run away towards St. Mary's School who had revolver in their hands and the fourth miscreant had run away towards Qtr No.25-A and 27-A and he had Khukhri in his hand. S.I. Jeet Singh was chasing this miscreant and S.O. Tyagi was chasing three miscreants. When S.I. Jeet Singh caught one miscreant, then the miscreant also gave him kick blows and thereafter he was arrested. That witness had pointed out towards

Sudesh and had stated that this is the miscreant who was caught by S.I. Jeet Singh. He has also stated that when the search of the appellant Sudesh was made, then he and one electrician V.K. Sharma were present there. In his one pocket, two live cartridges Ex.21 and Ex.22, were there and in another packet, Rs.220/- Ex.23 were there, in one hand one wrist watch Ex.24 was found and in the right hand, one Khukri Ex.20 was recovered. He has identified these materials and stated that this material was found at the time of arresting of Sudesh. All the articles were sealed in a cloth and was sealed accordingly, that cloth is Ex.25 and his signatures were also there. The recovery memo was also prepared on the spot. He has also signed on that recovery memo i.e. Ex.Ka-16. S.I. Jeet Singh had written this memo and he has signed on this recovery memo. The seal mohar was also taken i.e Ex.Ka-17. After that S.O. Tyagi had also come with one accused i.e. Naresh. He was caught by S.O. Tyagi. Then the Car No.DHB 6198 was searched and that was taken into the possession. A bag Ex.2 was recovered from the car and inside the bag, Rs.13,107/- was found. The receipt and letters Exs.5, 6 and 7 were found and from the back seat of the car, one Khoka was found. In the Dikki of the car, some Beedi bundles were also found. The scooter was toe-chained with car by a yellow string Ex.16. The number of Scooter was 8354 and the back wheel of the car was punctured. The fard of the car was also prepared and he has also signed on it, i.e. Ex.Ka-9. One khoka in front of the car and two khoka in a Chauraha were recovered. The Fard of these Khokas was prepared i.e. Ex.Ka-10. The fire made by the police on the spot were also recovered and a Fard was prepared i.e. Ex.Ka-11. He has also signed on this Fard. This witness was also cross-examined at length but nothing has come out which may create any doubt in his statement. The statement of this witness is trustworthy, reliable and believable.

24. P.W.8 is Constable Sahdev Singh. He has stated that on 8.3.1981, he was posted as Constable in P.S. Vikasnagar. On

that day, the appellant Naresh alias Munna and Sudesh Kumar were taken to the police station and from there they were taken to Dehradun court. Till when the appellants were in the custody, they were kept Baparda and they were taken to Jail in the Baparda and nobody was allowed to see them. Copy of the G.D. Ravangi is Ex.Ka-18 which he has filed.

25. P.W.9 is the S.I. Ghasita Singh who has stated that on 12.3.1981, he was posted in Thana Cantt. On that day, accused Pawan Kumar (now dead) was arrested by him along with other police persons about 8:00 P.M. From his possession, one country made pistol (Desi) 12 Bore and two live cartridges and one live cartridge in the Nall of the revolver, one bunch of keys and Rs.4.50 were recovered. Revolver is Ex.26 and the cartridges were marked as Ex.27, 28 and 29 and bunch of keys was marked as Ex.30 and Rs.4.50 were marked as Ex.31. The cloth in which all these articles were sealed mohar was marked as Ex.32. A fard of the recovered items was prepared on the spot i.e. Ex.Ka-19. The accused was kept Baparda. The FIR was lodged i.e. Ex.Ka-20 and the entry was made in the G.D., copy of which is Ex.21. The accused was taken to the police station. Up till when the accused were custody, they were kept Baparda.

26. P.W.10 is Constable Roop Chand who has stated that on 13.3.1981, he was posted in Thana Cantt. On that day, the accused Pawan and other accused were taken from Thana Cantt to court and Pawan was kept Baparda and admitted to Jail as Baparda. Up to when he was in custody, he was kept Baparda. He has field a copy of the G.D. i.e. Ex.Ka.22.

27. P.W.11 is R.C. Yadav, S.I. who is the I.O. of the case. He has stated that on 7.3.1981, he was posted at Sub-Inspector in P.S. Vikasnagar. The investigation of the case was entrusted to him. On that day, he has taken the statement of the S.O. N.K. Tyagi and the present appellant Sudesh and appellant Naresh (now died). He has recorded the statement of the witnesses,

inspected the spot and prepared the site plan Exs.Ka-23, Ka-24 and Ka-25. Car No.DHB 6198 was handed over to Jagdish by the order of the court. Against the appellants, he has also taken the sanction from the District Magistrate for the prosecution u/s 25 of Arms Act. District Magistrate O.P. Sharma has signed on it and he has identified them, i.e. Ex.Ka-27 and Ex.Ka-28. He has also filed charge sheets against the appellants u/s 25 Arms Act, i.e. Ex.Ka-31 and Ka-32. He has also filed the charge sheets against the accused Pawan & Sansar u/s 392/279/338/307/412 IPC i.e. Ex.Ka-33 and against the appellants Sudesh and Naresh u/s 392/307/412 IPC, i.e.Ex.Ka-34. After that, he was transferred and for that reason, the case property for chemical examination was sent by K.C. Pundir and the report was filed in the court. He has also stated that the S.I. Jeet Singh who had arrested the appellants Suresh Kumar had died.

28. After that the statements of the appellants Naresh, Sudesh and accused Pawan were recorded u/s 313 of Cr.P.C. They have denied the allegations made against them. Appellant Sudesh has stated that he was arrested by the police on 7.3.1981 at 8:30 A.M. in Badwala fare and he was kept at Dakpatthar out post through out the day and in the night, he had been falsely implicated in this case. He has denied all the allegations made against them.

29. In their defence, the appellants have examined D.W.1 Sri S.Dhawan, Deputy Jailor, Dehradun. He has stated that in March, 1981, he was posted as Deputy Jailor in Dehradun Jail. On 9.3.1981, appellants Naresh and Sudesh were admitted in the jail Ba-parda. Appellant Naresh was wearing a white check shirt, almond color pant, a pink color sweater and a cap and apart from these clothes, no entry of woolen coat was made. The beard and moustache was of 7 days and the hairs of head were of 2 inches. The appellant Naresh was admitted in jail and entry was made in the Register at Sl. No.317 and he filed the copy of the same, that is Ex.Kha-1. He has also stated that appellant Sudesh was admitted on 9.3.1981 and at that time, he was wearing white

shirt, white pajama and a bluish-black color veil (*Angochha*). His hairs of head were about 3 inches and he was not having beard or moustache. He was not wearing any woolen jersey. Appellant Sudesh was admitted in the jail and the entry was made in the Register at Sl. No.318 and filed copy of the same, that is Ex.Kha-2. On 13.3.1981, accused Pawan, Thana Cantt was admitted in the jail Ba-parda and entry was made at Sl. No.340. He was wearing black pant, white shirt, baniyan and underwear and he was not wearing any woolen jersey. His beard was of 1/8 inches and hairs of head were 2 inches. He has made the entry in the register and filed the copy of the same, i.e Ex.Kha-3.

30. Sri S.K. Aggarwal, learned Sr. Advocate for the appellants has argued the case u/s 392 r/w 34 IPC is not proved against the appellants as no identification parade was held and the incident as narrated by the prosecution is doubtful.

31. From the evidence discussed above, it is clear and established that the arrest of the appellant Sudesh and recovery of a Khukhri Ex.20 and other articles viz. two cartridges Ex.21 and Ex.22, Rs.220/- in cash Ex.23, and a watch Ex.24, from his possession were proved by Sri Brijendra Kumar Aggarwal, P.W.7 who was present at the relevant time and who has signed the recovery memo Ex.Ka-16. It may be mentioned that appellant Sudesh was chased and arrested by S.I. Jeet Singh. Sri B.K. Aggarwal is the Junior Engineer in the Hydel Department, Dakpathhar and he resides in Tons Colony, Dakpathhar. He has stated that about 5:30 P.M. on 7.3.1981, he was going to his sub-divisional officer and when he reached in front of Club No.1, he saw car No.DHB6198 coming with a scooter being dragged on behind it. He had also seen the car being chased by a bus and he also heard the noise of gunfire. A bullet hit the left hand side rear wheel of the car as a result of which the car stopped and the miscreants ran out of it who were chased by two police inspectors, who had come in a chasing bus. S.I. Jeet Singh ran after Sudesh who had disclosed this name on being arrested in

front of Qtr Nos25-A and 27-A. This witness has also proved that Sudesh had given kick blows to the arresting police inspector, but despite that S.I. Jeet Singh succeeded in securing his arrest. Appellant Sudesh was rightly identified by this witness. Sri B.K. Aggarwal P.W.7 has stated that he and one electrician Sri V.K. Sharma were present when appellant Sudesh Kumar was arrested and his personal search was made. The search of this appellant yielded the recovery of a Khukhari, two live cartridges, cash of Rs.220/- and a watch. All these articles were packed and sealed in bundle Ex.25 and a recovery memo Ex.Ka-16 was prepared. Sri B.K. Aggarwal has identified his signatures on Ex.Ka-16 and stated that it had been written in his presence by S.I. Jeet Singh. He has also proved that when Sudesh was brought near the car, Sri N.K. Tyagi had arrived there with appellant Naresh (now died) in his custody. He has further proved that on search of the car DHB 6198, a bag Ex.2 containing cash of Rs.13,107/- with some bills Exs.5 to 7 near the front seat of the car and an empty cartridge from the back seat of the car were recovered. He has proved the recovery memo Ex.Ka-9 and also proved three cartridges, one in front of the car and two from near the crossing were recovered by the police and recovery memo Ex.Ka-10 was prepared in that respect. Further, the memo Ex.Ka-11 regarding empty cartridges fired by the police inspectors was also proved by him. Sri B.K. Aggarwal is a government servant and neither any question nor any suggestion was being asked from him that he was under the influence of police. He has no enmity with the appellant and he is not in any way prejudiced to the appellant. He is a resident of that locality Dakapathhar and also serving in the same locality of Dakpathhar and he is a Junior Engineer there. Hence, his presence on the spot is very natural. The statement of this witness is reliable, trustworthy, believable and natural.

32. The identification of the appellants was not needed and even that was not in any way useful for the prosecution because

the appellant was seen by this witness P.W.7 B.K. Aggarwal and the other witnesses at the time of arrest. The appellant was arrested before P.W.7 B.K. Aggarwal and he was arrested by S.I. Jeet Singh and later on, S.O. N.K. Tyagi also reached there. S.I. Jeet Singh had died before recording of his statement in the court, as it is clear from the statement of P.W.11 R.C. Yadav, Further, there are injuries on the person of S.I. Jeet Singh and also on appellant Sudesh, which are mentioned in Para 5 and 8 of this judgment, which also proves the prosecution story as such narrated by the prosecution. At the time of arrest, appellant Sudesh, appellant Naresh (now died), S.O. N.K. Tyagi and S.I. Jeet Singh have got the injuries. The injury to S.I. Jeet Singh was caused by the appellant Sudesh and injuries to the S.O. N.K. Tyagi were caused by appellant Naresh and appellant Sudesh received injuries at the time of his arrest. Hence, it also proves the prosecution story as such narrated by the prosecution.

33. Sri Amit Bhatt, learned Addl. G.A. for the State has cited a judgment of the Division Bench of the Bombay High Court in the case of *Prem alias Santosh and etc. Vs. State of Maharashtra and etc. reported in 1993 CRI.L.J. 1608*. He relied on para 5 of the said judgment which is reproduced below:-

> *"5. The principal ground of attack of Shri Daga, the learned Counsel appearing for appellant-accused No.4 Prem, is that accused No.4 Prem was completely stranger to P.W. 37 Nandlal. He was not an ordinary resident of Warora. At the spot of incident, P.W. 37 Nandlal had no sufficient opportunity to see accused No.4 Prem. As such, in the absence of test identification parade, his testimony of having seen accused No.4 at the spot with other accused cannot safely be accepted.*
> *The broad proposition as canvassed is not legally sound in view of ratio laid down by Supreme Court in Harbhajan Singh V. The State of Jammu & Kashmir, AIR 1975 SC 1814 (1975 Cri LN 1553) and Jadunath Singh v. The State of Uttar Pradesh, AIR 1971 SC 363 : (1971 Cri LJ 305). Absence of identification parade by itself is not fatal and ipso facto it does not bring discredit to the claim of witnesses. Eye account is to be appreciating taking into account the attending and other circumstances.*
> *The learned Additional Sessions Jduge has appreciated the testimony of P.W.37 Nandlal and examined it in great detail in paras (12) and (13) of the impugned judgment. With the assistance of the learned counsel for the parties, we have gone through the reasoning of the learned Additional Sessions Judge."*

34. By placing reliance upon the aforesaid judgments, learned Addl. G.A. for the State has submitted that the absence of test identification parade by itself is not fatal and ipso facto it does not bring discredit to the claim of witness. He further submitted that eye account is to be appreciated taking into account the attending and other circumstances. Thus in this way, the prosecution case against the appellant Sudesh is proved by the statements of P.W.1 Dharmanand Tewari, P.W.2 Jagdish Prasad, P.W.7 B.K. Aggarwal, P.W.4 S.O., N.K. Tyagi and P.W.6 Rajesh Kumar.

35. On the basis of the discussions made above, since by not putting the appellant for identification does not at all prejudice the right of the appellant, thus, the argument advanced by learned counsel for the appellant has no force and hence cannot be accepted.

36. Learned senior counsel for the appellants has further argued that the prosecution has failed to establish that the amount recovered from the car and from the possession of the appellants belonged to Sri Jagdish Prasad P.W.2 and in this situation, the appellants could not be said to have committed any offence. The argument of learned counsel for the appellants has no force. Sri Jagdish Prasad and Sri Dharmanand Tewari both have proved that the miscreants including the two appellants snatched away the bag containing about Rs.25,000/- and appellants Naresh and Sudesh were arrested on being chased by them by the police within an hour or so from the time of occurrence of robbery and the case of Rs.13,107/- was recovered from the car in which the appellants and their associates had run away from the place of occurrence and which was left by them in Tons Colony after one of its wheel was punctured by the police. Besides this, Rs.220/- were recovered from Sudesh and Rs.415/- were recovered from Naresh. In view of these facts, there was no need to identify the currency notes in some identification parade. It is obvious that the currency notes of Rs.13,107/- were part of the looted amount of Rs.24,000-25,000/- which belonged to Sri

Jagdish Prasad and it was on account of this fact that said amount has already been released in his favour. Merely, because Sri Jagdish Prasad did not make an attempt to pick up the currency notes thrown by Sudesh at the time of running out of the car in Tons Colony, does not deviate him from the ownership of the recovered amount because in normal circumstances, he would not have risked his life by collecting notes when the shots were being exchanged between the miscreants and the police. It is also important to state that Sri Jagdish Prasad and Dharmanand Tewari were standing near the car when the two police inspectors had gone after the accused and there was sufficient time before return of the police inspectors for Jagdish Prasad to look into the car but being afraid, he did not even touch the bag containing Rs.13,107/- which were lying in the car. Therefore, the argument of learned counsel for the appellant that the prosecution has failed to prove the ownership of P.W.2 Jagdish Prasad over the recovered amount of Rs.13,107/- is misconceived and accordingly not acceptable.

37. In view of the discussions made above, the prosecution has successfully proved its case beyond reasonable doubt against the appellant Sudesh along with his other companions, with intention and pre-planning of robbery, had committed offence by robbing about Rs.25,000/- from Sri Jagdish Prasad out of which Rs.13,107/- were recovered from the car which was looted by the appellant Sudesh along with his other companions and golden ring and wrist watch of Jagdish Prasad and they have also snatched the money of Rs.220/- from Dharmanand Tewari and Rs.600/- from Gyanendra Singh and three wrist watches from Harish Chand. It is also established that at the time of arrest, Sub Inspectors N.K. Tyagi and Jeet Singh have received the injuries caused by the appellant and his other associates. It is also established that the appellants have found in possession of unauthorized two cartridges for which he had no licence. The Investigation Officer has duly proved sanction Ex.Ka-28 for

prosecution of the appellant u/s 25 of Arms Act. The sanction is valid in all respects. The participation of the appellant in the offence of robbery is fully established from the prosecution evidence.

38. In view of the above, I do not find any illegality or irregularity in the impugned judgment and order dated 26.07.1985 passed by learned Additional Sessions Judge, Dehradun. The learned Additional Sessions Judge has rightly convicted the appellants u/s 392 r/w 34 IPC and sentenced to undergo five years R.I. and further to pay a fine of Rs.5,000/- each. In default of fine, it was also rightly directed that the appellants shall undergo further R.I. for six months. Appellant Sudesh were further rightly convicted u/s 25 of Arms Act and was rightly sentenced to undergo R.I. for one year.

39. Since the appellant Naresh Kumar alias Munna has been reported to be died on 25.5.2003 in a police encounter, hence the appeal against him stands abated.

40. For the reasons recorded above, the appeal is devoid of merit and is hereby dismissed.

41. Let the record of the case be sent back to the trial court concerned for compliance of the order.

**(Dharam Veer, J.)**

**July 9, 2007**
Rajeev Dang